IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2217 OF 2006
IN
SUIT NO.2720 OF 2003

Mohini Oracles Pvt. Ltd., Mumbai ...Plaintiff
V/s.
Housing & Urban Development Crpn. Ltd. ...Defendants

Mr.Anil Agarwal, Advocate, for the Plaintiff.

Mr.Ajay Khaire, Advocate, i/b. Rajan Kakkara, for the Defendants.

CORAM : S.J. VAZIFDAR, J.

DATE : 4TH SEPTEMBER, 2007.

P.C. :

1. By this Notice of Motion the Plaintiff seeks an order directing the Defendants to return all the original documents submitted by the Plaintiff to the Defendants in respect of the mortgage plots.

2. The Suit is filed inter-alia for recovery of certain sums of money and for an order directing the Defendants to return the documents of title in respect of the said plots. The Plaintiff has also sought a declaration that the loan amounts have been fully repaid to the Defendants and that the Defendants, therefore, have no right, title or interest inter-alia in the mortgage plots.

3. The Plaintiff had earlier taken out Notice of Motion No.2494 of 2003 inter-alia for an order directing the Defendants to issue the N.O.C. in respect of the mortgage plots and for an injunction restraining the Defendants from alienating, disposing of or creating any third party rights in respect of the said plots.

4. By an order dated 15-09-2003 in the said Notice of Motion, the learned Judge recorded the Defendant's contention that a sum of Rs.10,38,835/- was due and payable by the Plaintiff. The Plaintiff denied the same but agreed to deposit a sum of Rs.10,00,000/- without prejudice to its contentions. By the said order read with a clarificatory order dated 23-09-2003, the learned Judge ordered that upon the amount of Rs.10,00,000/- being deposited, the Defendants would issue the N.O.C. as prayed in the Notice of Motion. Certain other orders were also passed with which I am not concerned presently.

5. Admittedly the amount of Rs.10,00,000/- was paid pursuant to the said order. There is no justification, therefore, in the Defendants retaining the documents of title. Even if the Defendants succeed the entire claim barring an amount of Rs.38,835/- is fully secured.

6. It is, however, contended that an amount of about Rs.13,64,117/- is now due and payable in view of the further interest that has accrued.

7. The Defendant was permitted to withdraw the said sum of Rs.10,00,000/- by the said order dated 15-09-2003 on furnishing a bank guarantee. The Defendants did not exercise that option. As a result thereof the amount is invested as directed by the Judge. Today, an amount of almost Rs.11,70,000/- is available.

8. In these circumstances, there is no justification for the Defendants to continue to retain the documents of title. Admittedly, the plots have been released. The N.O.C. has been issued. There is no logical explanation why the documents have been retained. In the circumstances, the Notice of Motion is made absolute in terms of prayers (a) and (b) subject to the Plaintiff depositing in Court a further sum of Rs.40,000/- within four weeks from today on the same terms and conditions contained in the order dated 15-09-2003.

9. The operation of this order is stayed for a period of six weeks from today.